

**DISTRICT OF COLUMBIA**  
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DISTRICT OF COLUMBIA  
DEPARTMENT OF PUBLIC WORKS

Petitioner

v.

RAINBOW

Respondent

Case Nos.: 2010-DPW-K188481  
2010-DPW-K188482  
2010-DPW-K189595  
2010-DPW-K400695  
NOV Nos.: K188481  
K188482  
K189595  
K400695

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**FINAL ORDER GRANTING MOTION FOR RECONSIDERATION,  
VACATING FINAL ORDERS, AND IMPOSING FINES**

On October 8, 2010, July 2, 2010, and July 19, 2010, the Department of Public Works (DPW) mailed four Notices of Violation to Respondent by first class mail, return receipt requested.<sup>1</sup> DPW sought a fine of \$50 for each violation and gave Respondent 19 days to respond. Respondent was charged with three violations of 21 DCMR 2022.1 (failure to separate recycling from other solid waste) in Violation Nos.: K188482, K189595, and K400695, and one

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<sup>1</sup> The Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801-810, permits DPW to charge the owner of the property where the violation occurred or the person who created the nuisance. Lack of knowledge of the law or regulation is not a defense. *See Cheek v. United States*, 498 U.S. 192, 199 (1991) (citations omitted) (professed ignorance of the law is not a valid defense to its violation). If the violation was on your property, you are responsible for the nuisance even if you did not create the nuisance. *See Gary Investment Corp. v. D.C. Dep't of Health*, 896 A.2d 193, 197 (D.C. 2006) (imposing strict liability on property owner for violation of § 700.3) and *Bruno v. D.C. Bd. of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995).

violation of 21 DCMR 2022.4 (failure to have a sufficient number of containers for separated recyclables) in Violation No.: K188481. DPW filed United States Postal Service Domestic Return Receipts indicating that the Notices were delivered and signed for. Respondent did not answer the Notices. On January 4, January 5, January 9, and January 20, 2012, this administrative court issued default notices in this matter, finding Respondent liable for the violations and ordering Respondent to pay the fine plus a penalty totaling \$100 in each case for a total of \$400.

On January 17, 2012, Respondent filed a letter with this administrative court requesting that the final order finding it in default be changed. Respondent requested that this administrative court vacate the Final Orders and change the pleas to “Admit with Explanation.” Respondent stated that the Notices of Violation were sent to its local store, but the store was unsure how to proceed.

This administrative construes Respondent’s filing as a Motion for Reconsideration. Within ten (10) calendar days after a final order has been served, any party may file a motion asking the Administrative Law Judge to change a final order, and such a motion is a “motion for reconsideration.” OAH Rule 2828.3. An additional five (5) days are added to the ten-day deadline when the Final Order is served by United States mail. OAH Rule 2812.5. This administrative court served the Final Orders by mail on January 3, 4, 5, and 20, 2012, and Respondent filed his motion on January 17, 2012. This filing was within fifteen calendar days after the service of the final orders.

On March 2, 2012, this administrative court issued an Order giving DPW 14 days to respond to Respondent’s Motion. DPW did not file a response.

Pursuant to OAH Rule 2828.5(b), if a party files a motion for reconsideration, the Administrative Law Judge may change the final order if the party filing the motion did not file a required answer to a Notice of Violation and has a good reason for not doing so. Respondent stated in its motion that its local store was unsure how to respond to the Notices of Violation, nor did it realize that it had to forward the paperwork to the home office in a timely manner. I find that Respondent has shown a good reason for not filing an answer to the Notices of Violation in a timely manner. Therefore, I will vacate the Final Orders in these cases and accept Respondent's filing as an "Admit With Explanation" plea.<sup>2</sup>

**FINDINGS OF FACT:** Respondent has admitted violating the regulations as described in the Notices of Violation. Respondent was the victim of a scam beginning in March 2010, where a broker who handled all of Respondent's garbage was collecting payments from Respondent but was not paying the garbage haulers. The garbage haulers refused to pick up Respondent's trash. Respondent has been working with the local District Attorney to prosecute the broker and has been working to resolve all of the issues regarding its debris. Respondent took responsibility, took efforts to prevent future violations and made good faith efforts to comply with the Notice of Violation.

**CONCLUSIONS OF LAW:** By entering a plea of "admit with explanation," Respondent acknowledged violating the regulations as described in the Notices of Violation. The regulation sets a fine of \$50 for the each violation at a commercial site without abatement. Based on my Findings of Fact, I modify the fine in each case to \$35, for a total fine of \$140.

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<sup>2</sup> An administrative law judge has authority to "suspend or modify fines, penalties, and abatement costs . . ." D.C. Official Code § 8-808(b)(5). When a respondent pleads Admit with Explanation, an administrative law judge may take the respondent's explanation into consideration when imposing a fine or other sanction.

It is, therefore, this 2nd day of April, 2012:

**ORDERED**, that Respondent's Motion for Reconsideration is **GRANTED**; and it is further

**ORDERED**, that the January 4, January 5, January 9, and January 20, 2012, Final Orders finding Respondent in Default are **VACATED**; and it is further

**ORDERED**, that Respondent is **LIABLE** for the violations as alleged in K188481, K188482, K189595, and K400695; and it is further

**ORDERED**, that Respondent **SHALL PAY** a **total** of **\$140** according to the instructions below within 35 days of the mailing date of this Order; and it is further

**ORDERED**, that if Respondent does not pay, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 35 days from the mailing date of this Order; and it is further

**ORDERED**, that if Respondent does not pay, there may be further sanctions, including the suspension of any licenses or permits Respondent holds and the placement of a lien on real and personal property Respondent owns; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

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Ann C. Yahner  
Principal Administrative Law Judge